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HEARING
ON
NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2018
AND
OVERSIGHT OF PREVIOUSLY AUTHORIZED
PROGRAMS
BEFORE THE
COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTEENTH CONGRESS
FIRST SESSION
SUBCOMMITTEE ON READINESS HEARING
ON
**CONTINUED OVERSIGHT OF THE
TRANSFER OF EXCESS MILITARY
EQUIPMENT TO CIVILIAN LAW
ENFORCEMENT AGENCIES**

HEARING HELD
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**CONTINUED OVERSIGHT OF THE TRANSFER OF
EXCESS MILITARY EQUIPMENT TO CIVILIAN
LAW ENFORCEMENT AGENCIES**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
SUBCOMMITTEE ON READINESS,
Washington, DC, Thursday, July 27, 2017.

The subcommittee met, pursuant to call, at 10:37 a.m., in room 2118, Rayburn House Office Building, Hon. Joe Wilson (chairman of the subcommittee) presiding.

OPENING STATEMENT OF HON. JOE WILSON, A REPRESENTATIVE FROM SOUTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON READINESS

Mr. WILSON. Good morning. This hearing will come to order. Ladies and gentlemen, I welcome you all here today and call this hearing of the House Armed Services Committee, Readiness Subcommittee, on “Continued Oversight of the Transfer of Excess Military Equipment to Civilian Law Enforcement Agencies” to order.

I would like to begin by recognizing the dedicated service of our Readiness Subcommittee clerk, Ms. Brignola. This will be Jodi’s last official event for our subcommittee and I want to personally thank her for her contributions to our efforts over the past year. I wish her the best of luck as she moves forward in her future endeavors.

[Applause.]

One of the objectives of this subcommittee is to bring attention to matters that impact on the overall readiness of the Department of Defense. This includes programs or activities which face management challenges, present budget implications, or could be administered more efficiently. Whatever the root cause, it is our goal to provide necessary oversight in order to ensure our Armed Forces achieve the highest levels of readiness possible.

Given the current threats facing our Nation and the budgetary pressure place on the Department of Defense, accountability is paramount and every dollar counts. Vigorous oversight can help ensure that mistakes don’t happen and when they inevitably do, we learn lessons from these missteps.

For this reason, I am pleased to convene this hearing today on the recent Government Accountability Office [GAO] report highlighting deficiencies found with the management and operation of the Law Enforcement Support Office, LESO, within the Defense Logistics Agency [DLA].

The LESO is responsible for the “1033 Program” which has provided tremendously valuable resources to our Federal, State, and

local law enforcement agencies since 1991. These necessary items have contributed to law enforcement's ability to conduct counter-narcotics, counterterrorism, and border security missions throughout the United States and ensure that items already paid for by the taxpayer continue to "protect and serve" the citizens of the United States.

Earlier this month, the GAO report stated that the DLA-managed LESO program inappropriately assigned more than 100 controlled items with an estimated value at \$1.2 million. This revealed deficiencies in the process for verification and approval of Federal law enforcement applications and in the transfer of controlled property. The Department of Defense, DLA, and the LESO program must improve its monitoring, management, and administration of this critical program. I read the GAO recommendations very carefully and applaud DLA for taking a very proactive approach to addressing the shortfalls and immediately acknowledging the problems identified.

I look forward to hearing what progress DLA has been made in continuing to remedy these various deficiencies. Our oversight intends to ensure taxpayer dollars are used responsibly, security is maintained for sensitive items, and accountability of equipment is never taken for granted.

Our panel will address the findings and recommendations of the GAO report as well as the actions taken by DLA to correct identified deficiencies.

I now turn to our very valued ranking colleague, Congresswoman Madeleine Bordallo of Guam, for her introductory comments.

[The prepared statement of Mr. Wilson can be found in the Appendix on page 23.]

STATEMENT OF HON. MADELEINE Z. BORDALLO, A DELEGATE FROM GUAM, RANKING MEMBER, SUBCOMMITTEE ON READINESS

Ms. BORDALLO. Thank you very much, Mr. Chairman, for calling this important hearing on the recent GAO report on the DOD [Department of Defense] Excess Property Program, also known as the 1033 Program. And thank you also to our four witnesses for being with us today for what I expect to be an insightful discussion.

Let me begin by stating that I understand the value of the 1033 Program. It allows Federal, State, and local law enforcement agencies to fill critical equipment shortfalls at little to no additional cost to the taxpayer, leveraging excess DOD property. Now many of these items are noncontrolled, can be purchased at any office supply or furniture store, and help alleviate budgetary stress, particularly on local agencies.

However, this equipment can also be controlled property, items that are sensitive in nature and cannot be released to the general public, such as firearms and military-grade imagery technologies.

And that is what makes the GAO report particularly concerning. Not only does it highlight the negligence with which DLA treated property procured with taxpayer dollars, but it demonstrates a dangerous vulnerability that could compromise the safety of the American people.

So I am particularly appreciative that GAO conducted this operation and delivered this report because it brings to light these vulnerabilities and allows us to conduct critical oversight on the handling of equipment to ensure reforms are in place to better secure the transfer program.

I am deeply disturbed, however, by the prospect that a malicious individual or organization could procure DOD property, especially controlled items. Understanding that this is likely a result of a combination of issues, including inadequate protocols and safeguards, insufficient training, and potential cultural errors, I expect to dig down on how this program needs to be reformed.

So I do look forward to the discussion here this morning and hope that we can come away with clear objectives and steps forward to ensure this program has the proper safeguards and accountability in place.

Mr. Chairman, I thank you again for holding this important meeting, and I yield back.

Mr. WILSON. Thank you, Congresswoman Bordallo.

We are pleased to recognize our witnesses today. I want to thank them for taking time to be with us. We have Ms. Zina Merritt, Director of Defense Capabilities and Management of the Government Accountability Office; Mr. Wayne McElrath, the Director of Forensic Audits and Investigative Services of the Government Accountability Office; Mr. Mike Scott, who is the Deputy Director of Logistics Operations of the Defense Logistics Agency; and Mr. Mike Cannon, the Director of the Defense Logistics Agency Disposition Services.

We will begin with statements from each organization. We will begin, very appropriately, with the Government Accountability Office.

Mr. WILSON. Ms. Merritt.

STATEMENT OF ZINA MERRITT, DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT, GOVERNMENT ACCOUNTABILITY OFFICE; AND WAYNE McELRATH, DIRECTOR, FORENSIC AUDITS AND INVESTIGATIVE SERVICE, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. MERRITT. Chairman Wilson, Ranking Member Bordallo, and members of the subcommittee, thank you for the opportunity to be here today with my colleague, Wayne McElrath.

Our testimony today summarizes key findings from our July 2017 report on DOD excess controlled property, and addresses one—how Federal, State and local enforcement agencies reported using and benefiting from the transferred property.

And two—the extent to which Defense Logistics Agency, or DLA, has taken actions to enhance processes, including internal controls, related to the transfers of such property.

DOD has the authority to transfer excess personal property to Federal, State, and local enforcement agencies. DLA Disposition Services administers the Law Enforcement Support Office, or LESO program, for DOD. During calendar years 2013 through 2015, DOD has reported transferring approximately \$1.1 billion of excess controlled property to law enforcement agencies.

Controlled property typically involves sensitive equipment and items that cannot be released to the public, such as detonation robots, small arms, and Mine-Resistant Ambush Protected vehicles, or MRAPs. Law enforcement officials that we surveyed and interviewed cited a number of ways in which they had benefited from the program, with several reporting that the transfers of controlled property allowed them to save money. The reported uses included enhancing counterdrug and counterterrorism activities, search and rescue, natural disaster response, and police training.

DLA has taken actions to enhance processes for the program in response to past recommendations made by GAO, as well as DOD and DLA offices of Inspector General. DLA has taken some steps to address previously identified weaknesses and its processes and procedures mostly at the State and local levels. In our July report, we noted weaknesses at the Federal participant level in three areas: one, verifying and approving applications; two, transferring property; and three, the assessment of risk.

Through creating a fictitious Federal agency, we gained access to the program and obtained over 100 controlled items with an estimated value of \$1.2 million, including night vision goggles, simulated rifles and simulated pipe bombs, which could be potentially lethal if modified with commercially available items. Images of these items are pictured on the graphic boards here in the hearing room today.

Specific weaknesses highlighted in our report include DLA's internal controls for verifying and approving Federal agency applications and enrollment in the program were not adequate; specifically, LESO's reliance on electronic communications without verification does not allow it to properly vet applicants.

Second, our testing identified deficiencies in the transfer of controlled property, such as DLA personnel not routinely requesting and verifying identification of individuals picking up property.

Third, while DLA has taken some steps to address identified deficiencies in the program, DLA lacks a comprehensive framework for instituting fraud prevention and mitigation measures at all stages of the process. DLA officials acknowledge that they have not conducted a fraud risk assessment.

Overall, we concluded in our report that DLA's internal controls did not provide reasonable assurance in preventing fraud. Therefore, we made four recommendations to DLA.

One, review and revise policy or procedures for verifying and approving applicants.

Two, ensure Disposition Services officials verify that persons picking up items have valid credentials.

Three, issue guidance that requires Disposition Services officials to verify the quantities and types of items being picked up beforehand.

And, lastly, conduct a fraud risk assessment to design and implement a strategy with specific internal control activities to mitigate assessed fraud.

DOD concurred with all of our recommendations and highlighted actions to address each one. Chairman Wilson, Ranking Member Bordallo, and members of the subcommittee, that concludes my prepared statement.

My colleague and I would be happy and pleased to respond to any questions that you may have.

[The joint prepared statement of Ms. Merritt and Mr. McElrath can be found in the Appendix on page 25.]

Mr. WILSON. Thank you very much, Ms. Merritt, and indeed, your professionalism is very, very impressive.

Mr. McElrath, would you like to make a presentation?

Mr. MCELATH. Sir, I have provided a combined statement.

Mr. WILSON. Thank you very much, and we now proceed to the Defense Logistics Agency, Mr. Scott.

STATEMENT OF MIKE SCOTT, DEPUTY DIRECTOR OF LOGISTICS OPERATIONS, DEFENSE LOGISTICS AGENCY; AND MIKE CANNON, DLA DISPOSITION SERVICES, DEFENSE LOGISTICS AGENCY

Mr. SCOTT. Chairman Wilson, Ranking Member Bordallo, distinguished committee members, thank you for the opportunity to be here today to discuss the Defense Logistics Agency's administration and execution of the 1033 Program, also known as the Law Enforcement Support Office program, or LESO program.

I am Mike Scott, Deputy Director, DLA Logistics Operations. With me today is Mr. Mike Cannon, the Director of DLA Disposition Services. We appreciate the opportunity to discuss the July 2017 GAO report on Department of Defense excess property and to advise you of the actions we have taken to further strengthen our processes.

DLA Disposition Services, a field activity of DLA, is responsible for the final disposition of excess property received from the military services. DLA Disposition Services also administers and executes the 1033 Program through their LESO. About 7,500 Federal and State law enforcement agencies across 50 States and U.S. territories actively participate in the program.

Thirty Federal agency headquarters are currently enrolled. These are the higher headquarters to the 345 Federal law enforcement activities participating in the program. DLA has worked extensively over the last several years to improve the State and local side of the program, which is 96 percent of total participation.

While the GAO's recent review did validate enhancements made in the State and local program, it also highlighted vulnerabilities in the Federal program. DLA takes the findings very seriously, and is actively addressing and correcting the deficiencies.

In September 2015, DLA began a focused improvement effort to strengthen our Federal program. We have implemented robust controls in our Federal program, which already exist in our State program. Specifically, we have addressed our—revised our procedures for verifying and approving Federal agency applications for enrollment.

First, DLA now requires an executive level representative in the Federal agency designate a point of contact in writing. This POC will serve as the agency's Federal coordinator, who will validate and endorse all enrollment applications and all equipment requests for their field activities.

Second, DLA now requires the POC to sign a memorandum of understanding, outlining and accepting their responsibilities for

management of their program. We have sent all 30 current Federal agency headquarters this MOU and 12 agencies have already signed and returned the MOU.

Third, DLA will visit each Federal agency headquarters and meet with their POC to confirm eligibility. As of today, DLA has visited 22 Federal agency headquarters.

Additionally, DLA has strengthened the internal approval process for enrolling Federal agencies.

First, we have designated a Federal LEA [law enforcement agency] liaison to manage the application process. Second, DLA will utilize the FBI's [Federal Bureau of Investigation's] National Crime Information Center, or NCIC, database to verify the legitimacy of all organizations. Finally, the LESO program manager is now required to approve all Federal applications as a second-level internal review.

With regard to the GAO findings on process weakness for verification of customer identity and the type and quantity of property issued, we have taken the following actions.

First, we immediately conducted remedial training at the sites GAO visited. Second, we mandated reinforcement training at all 103 of our disposition sites. We are 50 percent complete on this aggressive effort, and are on track to finish 2 months ahead of schedule. Third, we added this topic as an emphasis item to our existing compliance program, which includes, among other things, no-notice spot inspections, and a DLA headquarters management review.

In response to the GAO recommendation to conduct a fraud risk assessment as outlined in GAO's fraud risk framework, DLA headquarters, specifically, our DLA Inspector General Office and my Logistics Operations directorate, will lead this effort with participation by DLA Disposition Services.

DLA has made significant enhancements to improve its policies, procedures, and internal controls in the 1033 Program. We remain committed to continuous process improvement to ensure we provide the best possible support to law enforcement agencies and their critical mission.

Chairman Wilson, Ranking Member Bordallo, and members of the committee, we thank you for the opportunity to discuss this important issue here today, and are prepared to answer any questions you have.

[The joint prepared statement of Mr. Scott and Mr. Cannon can be found in the Appendix on page 40.]

Mr. WILSON. And, Mr. Cannon.

Mr. CANNON. Sir, Mr. Scott spoke on behalf of the agency.

Mr. WILSON. Thank you, and I want to—it really is remarkable that an agency acknowledges that an error occurred and has taken a positive response, so we appreciate your service.

I am really grateful, today we have really talented members of the subcommittee here, people who are really dedicated to the American people and so many are here that we are going to, very strictly, follow the 5-minute rule. And we have somebody very talented, Drew Warren, who is going to keep the 5-minute rule beginning with me. And so we will proceed right away.

Ms. Merritt or Mr. McElrath, could you—how did you determine the specific vulnerabilities you assessed that led to the decision

that the LESO control measures by using a fictitious agency? How did you determine that? Again, we appreciate you being proactive.

Ms. MERRITT. I will start the response.

While we were actually conducting some of our fieldwork in some of the States, we were reviewing the names of the applicants. And, as we were reviewing the names of those particular applicants, we noticed one applicant that had a title that did not seem to be a legitimate agency.

While doing that, we questioned DLA, and they acknowledged that that was an entity in which they had been investigating—and continues to investigate. So, that was one of the key triggers for this, as well as, we had made a number of recommendations over the years to tighten controls. And so we wanted to ensure that some of these recommendations were properly implemented.

My colleague probably will have a little bit to add to that response.

Mr. MCEL RATH. Based on the information that we received from our defense capabilities team, we actually formulated a plan to develop a false or fictitious law enforcement entity and created an on-line presence.

After that, we submitted an application to DLA for approval. We went through their online enrollment process and then actually went on their online ordering system to actually acquire goods.

Mr. WILSON. And that is amazing, but I appreciate again, your being—we all appreciate you being proactive. Additionally, how do you assess the Defense Logistic Agency's current administration of the 1033 Program, and how does this compare to what you initially found during the beginning of your investigation last year in 2016?

Ms. MERRITT. As noted, we briefed DLA continuously on the progress of our work, including their Inspector General's Office. In May, we had a formal meeting with them where we fully disclosed our findings to them. At that point in time, they told us about some respective actions that they had started relating to the application.

For example, they had modified their application. As the review continued, they also had begun developing the memorandums of understanding at that time. So, in short, a number of actions were already commencing as we continued and got closer to the end, and they realized that we had, in fact, posed as a fictitious organization and obtained items.

Then, they also noted that there were additional actions that they were going to take in order to close those particular gaps in their processes.

Mr. WILSON. Thank you.

And for Mr. Scott, your service for security of the American families is very important with the 1033 Program. What is the process for a law enforcement agency to obtain controlled items? What additional steps in the authorization process for obtaining the items has been considered in light of the Government Accountability's Office investigation?

Mr. SCOTT. So, Chairman, as the GAO said, our process previous to finding out what they were able to accomplish required that Mr. Cannon's organization work directly with the Federal law agencies. There was an application that had to be filed; they had to provide

statutes of authority; special agents, senior agents in charge had to sign those applications to be able to get into the program.

But as you have heard that our controls were not adequate. We recognize that. We had started our efforts to improve the Federal program prior to the GAO starting their effort. And, I will say, immediately, I think the first meetings we had with them were in March of 2017, when we learned of what they were able to do in their investigation, by April 3rd we had implemented those additional things that you have heard about.

And those include now that we get an executive level sponsorship from the Federal agency. We have a POC identified going forward. We visit those organizations to validate. We are now going to use the FBI database to ensure that their organization is correctly loaded there and they are legitimate. Those are all things we have added, and we believe those processes will prevent this from happening in the future, Chairman.

Mr. WILSON. And they are very responsible safeguards. I believe there were three recommendations; there is still one pending, is that being acted upon?

Mr. McELRATH. Yes, it is. As Mr. Scott mentioned, they are scheduling with the OIG [Office of Inspector General] and my headquarters to do the fraud risk assessment.

Mr. WILSON. Thank you very much.

Congresswoman Bordallo.

Ms. BORDALLO. Thank you, Mr. Chairman.

Mr. Cannon and Mr. Scott, the GAO recommendations included strengthening internal controls and reviewing identification authorization protocols. Now, given what we know now, what is your level of confidence that such a violation will not happen again?

And, secondly, recognizing that only 4 to 7 percent of transfers are controlled, should DLA temporarily suspend the transfer program for controlled items until the problems are fixed? You state that changes have already been made, but then we wouldn't be here if there wasn't still a problem. So, will it happen again, or should we suspend the program until changes have been made?

Mr. CANNON. Ma'am, I will take that.

First of all, the control measures that we have in place I am confident will preclude this from happening again. As Mr. Scott alluded to or mentioned, we now require a very similar to the tight controls we had implemented in the State and local procedures, a Federal executive appointment of their POC, a face-to-face visit to ensure that they are compliant, and then, as a backup, a national—the NCIC database check to verify they are a valid agency.

With those controls in place, I am confident that this won't happen again.

Ms. BORDALLO. All right, second part of my question?

Mr. CANNON. Yes, ma'am.

In March, when we got an out-brief and discussed this with the GAO, I immediately suspended release of all property to Federal agencies until we could put these controls in place.

Those controls included a memorandum of understanding which we had began developing over a year ago. That memorandum of understanding was finalized in DLA in December of 2016. And

until the agencies complete the new requirements, I do not release any additional property.

Ms. BORDALLO. So, you don't think you—the program should be suspended? Is that what, in essence, what you are saying?

All right, Mr. Cannon, DOD responded to GAO recommendations number two by stating that, and I quote, "DLA currently has policy requiring on-site officials to request and verify identification from all customers."

What, if any, disciplinary actions have been taken against the individuals and the supervisors responsible for oversight and training who approved the fictitious application for enrollment in the Law Enforcement Support Office program, approved the request to property, or conducted the transfer of the property, without following proper procedures? How is DLA determining who is responsible?

Mr. CANNON. Ma'am, we are looking at our records to determine the type—the property that was released and where it was released, so we can determine, as best we can, the individual or individuals responsible.

Prior to that, as soon as we identified the locations that the property came from, we immediately conducted remedial training for every person at that site for the control measures we already had in place that were not followed.

Since then, we have also added additional emphasis on our controls when we do our semiannual self inspection, when we do our biannual compliance reviews, when I do my no-notice site visits, and when the headquarters comes down to do their visits, as well.

Any time an individual is found who is, either behavior or performance, is not up to standards, we take appropriate corrective actions, depending on the circumstances.

Ms. BORDALLO. What kind of disciplinary action would you take? Are you releasing the people? Changing their positions, or what?

Mr. CANNON. I have a range of actions I could take, depending on the circumstances and the situation, and I have taken actions for infractions everywhere from a letter of counseling, to dismissal. So the range is open, depending on the situation, ma'am.

Ms. BORDALLO. Okay, I have one quick question.

Ms. Merritt, while the majority of your report focused on the application approval and transfer of excess property, can you provide insight into what you observed with respect to accountability and tracking of controlled property, both at the disposition sites, as well as once transferred to a Federal, State, or local law enforcement agency? And I don't have much time left.

Ms. MERRITT. Sure. At the Federal level, we did observe one case in which one Federal organization, in DC, was not aware of how much property had been transferred to that agency or to its respective activities in the field. That was quickly remedied when they contacted LESO, they were able to obtain a list, and they temporarily halted any approvals at that time.

At the local and State sites themselves, that actually went pretty well because they had a State coordinator. A lot of the processes were being double-checked. And so, unlike the Federal level, there were more checks and balances at the State and local level.

Ms. BORDALLO. Thank you. Thank you very much, and I yield back.

Mr. WILSON. Thank you, Congresswoman Bordallo.

We now proceed to Congressman Austin Scott, of Georgia.

Mr. SCOTT OF GEORGIA. Thank you, Mr. Chairman. My questions are predominately for the DLA. You said that you recognized the problem prior to the GAO examinations, is that correct?

Mr. SCOTT. That is correct.

Mr. SCOTT OF GEORGIA. When did you first recognize the problem?

Mr. SCOTT. We first started our efforts to improve the Federal program in September of 2015. We began by bringing in Federal agencies for more training to ensure they knew how to properly work with the program, and that quickly led to the beginning of the development of the memorandum of understanding.

And, at the point when we heard in March of 2017 the investigative—what had happened, as you heard, we quickly moved to implement additional procedures.

Mr. SCOTT OF GEORGIA. But you said your efforts began in 2015. When did you first recognize that you had a problem?

Mr. CANNON. Sir, we recognized that the control measures in place for the Federal agencies were not as robust as those for the State and local agencies in late 2015. As we discussed the—

Mr. SCOTT OF GEORGIA. Okay so it was—

Mr. CANNON [continuing]. The program with the Federal agency participants.

Mr. SCOTT OF GEORGIA. Okay, so you first recognized the problem in 2015?

Mr. CANNON. Late 2015.

Mr. SCOTT OF GEORGIA. You were taking corrective actions, but you did not expedite those actions until the GAO report?

Mr. CANNON. Correct.

Mr. SCOTT OF GEORGIA. So, most of the items that are on these boards are not lethal items. Would the controls have been different if they had been firearms or a lethal item?

Mr. CANNON. We have additional application process in place for items such as weapons, and for armored vehicles and aircraft, so there is a more thorough application process that they would have had to gone through for those items.

Mr. SCOTT OF GEORGIA. So the difference in the threshold, is it based on the lethality or the cost of the item? What leads to the additional measures?

Mr. CANNON. When we did our risk analysis, internally, we determined, in conjunction with guidance from the White House Committee and the White House Review Permanent Working Group, that extra controls were in place. We have always had extra controls in place for weapons and armored vehicles and aircraft. So, it is based on the type of equipment and the potential use of that equipment.

Mr. SCOTT OF GEORGIA. Okay, and so it would be—potentially somebody used something fake to obtain something from the government and then turn around and sell it on eBay or at a pawn shop or something along those lines? Do we have any idea what happened to the items or the value of the items?

Mr. CANNON. The items from the GAO report, sir?

Mr. SCOTT OF GEORGIA. No, the ones that occurred prior to you recognizing that—something happened for you to recognize that you had a problem. Did items go to—was there a misrepresentation, was there a theft of items—

Mr. CANNON. No, sir.

Mr. SCOTT OF GEORGIA [continuing]. Effectively, through misrepresentation?

Mr. CANNON. As we looked at our control measures in place for the Federal program, we noticed they were not as stringent as the control measures we had in place for the State and local program. So our efforts were to make the programs more similar in the levels of control, not that anything had gone out, but to prevent things from going out, sir.

Mr. SCOTT OF GEORGIA. But you do not believe that anybody misrepresented something to obtain something for free, or at a discount, from the Federal Government and then turn around and sell it for profit?

Mr. CANNON. I have no knowledge of that happening.

Mr. SCOTT OF GEORGIA. Do we know where the items are?

Mr. CANNON. We know where all the items from the GAO report are, yes, sir.

Mr. SCOTT OF GEORGIA. Okay. With that said, Mr. Chairman, that pretty much answers the questions that I had. I am happy that we know where all of the items are, and certainly appreciate the additional measures that are being put in place; it is an important program.

I will tell you, I know a lot of the discussions around the program revolve around some of the larger equipment. I happen to know a sheriff's deputy, fairly well, that stepped out of a BearCat, and as he stepped out of it buckshot hit the window, and had it not—had he been in a normal squad car, he wouldn't be with us today, so I hope that we will continue this program, and making sure that we get our law enforcement officers the equipment they need to do their job.

Mr. WILSON. Thank you very much, Congressman Scott, for your insight and your personal view, too, which I agree with. Thank you.

And we are grateful now to proceed to Congressman Anthony Brown, of Maryland.

Mr. BROWN. Thank you, Mr. Chairman, and I appreciate that you and the ranking member have convened this hearing and to look into this very important issue.

My question really goes to a little bit of a broader look at the 1033 Program. In response to protests in Ferguson, following the killing of Michael Brown, President Obama issued an executive order that included the creation of a DOD and Justice Department working group to ensure oversight of this program.

According to the Constitution Project, that group is not meant—has not met since January of this year with the new—or under the new administration. In fact, President Trump has indicated that he intends to rescind the previous administration's executive order that ensured vital training for equipment acquisition, and that is of concern to me.

I am also concerned that the transfer of armored vehicles and high-powered firearms, as well as many other controlled items,

makes our police stations look more like forward operating bases. It would unsettle me to see Mine-Resistant Ambush Protected armored vehicles patrolling the streets of Prince George's and Anne Arundel County.

I do get the importance of the program; it is all about proportionality. So my question is, does the agency take into account the actual or potential threat that a community faces prior to delivering these military style equipment?

Mr. SCOTT. So, Congressman, we actively support that permanent working group for DLA; our vice director of the agency is our lead on that group. As you may know, that group looked very closely at the categorization of items: which things would be prohibited, which things should be controlled.

They completed another look at that in September of 2016, going into this fiscal year, and we take that very seriously. When we get the applications, we apply the decisions that were made from that permanent working group on what is allowed for us to execute, we execute the program.

But that group, when they made those determinations in those categories, they brought in a number of different folks to have those discussions that included experts on the use of those type of weapons.

It included civil liberties leaders, it included law enforcement leaders, folks from all—

Mr. BROWN. If I can just jump in because I don't have too much time. Can the small city of Seat Pleasant in Prince George's County with, I don't know, 12,000 residents, acquire the same type equipment that the city of Baltimore can obtain?

Or do you do some sort of—again, risk assessment, potential threat, training, capabilities of the local enforcement agency?

Mr. SCOTT. So all requirements have to first pass through a State coordinator, then Mr. Cannon's group also reviews that. They review it also against the size of that force and the number of items that they are allowed to have.

The training for the items is—that goes back on the law enforcement community, DOD does not provide the, kind of, use of training for what is issued.

Mr. BROWN. Do you require the training though?

Mr. SCOTT. We require that they show and state that they have done that training. Yes, sir.

Mr. BROWN. Thank you. A follow-up, I just have a little bit of time left. What efforts, if any, I think you may have touched on this, is the DLA taking to work not only with local law enforcement, but also alongside community members, I heard you mention community members in your response, through the 1033 transfer process.

Mr. CANNON. Sir, one of the requirements that we have levied on the program for the State and local agencies is that, before they receive property from us, before they enroll in the program, they must be approved by their governing body.

So, whether that is the State or county, but whoever oversees that body, must approve not only their participation in the program, but their withdraw of property.

Mr. BROWN. So, like the Seat Pleasant city council?

Mr. CANNON. Correct.

Mr. BROWN. Okay.

Mr. CANNON. If Seat Pleasant is in the program.

Mr. BROWN. Right.

Mr. CANNON. They would have—

Mr. BROWN. One final follow-up. Are there any restrictions on transferring equipment, under the 1033 Program, when the local enforcement agency is under investigation by the DOJ [Department of Justice] for any violation of civil rights? And is that addressed in consent orders—that the handful that are currently in place?

Mr. CANNON. We coordinate with the Department of Justice, and anytime they have concerns with the department, we restrict the transfer of property to that department until they tell us otherwise.

Mr. BROWN. So, it is not a—you evaluate whether it ought to be restricted or if there is a violation, you restrict?

Mr. CANNON. DOJ evaluates and then advises us to restrict.

Mr. BROWN. Thank you, Mr. Chairman. I yield back.

Mr. WILSON. And thank you, Congressman Brown.

And we now proceed to Congresswoman Vicky Hartzler, of Missouri.

Mrs. HARTZLER. Hi. I appreciate both—the good work from the GAO as well as the DLA in addressing this real issue here. So, please discuss the process for a law enforcement agency to obtain controlled items.

What other steps, in the authorization process for obtaining these items, are being considered in light of the GAO's investigation?

Mr. CANNON. The process that we have in place for our States and locals is a similar process we have already implemented for the Federal Government. But anytime somebody wants to withdraw a piece of controlled property, first that has to go through their State or Federal coordinator to approve that they need it.

We also have some apportionment rules. We do give preference to counterdrug, counterterrorism, and border patrol responsibilities, but for things like MRAPs, we also look at a local ability for law enforcement agencies that provide mutual support. And if there is mutual support available from another close-by law enforcement agency, we won't apportion them, for example, an MRAP.

So we won't give the county and the city both an MRAP if they are in the same location. For weapons, we authorize one per paid officer, and for vehicles, it is typically one vehicle unarmored, or like a Humvee, for every three officers.

Mrs. HARTZLER. Okay. That is very good. Given the GAO created a fictitious law enforcement agency that was approved for the program, how does DLA plan to review and revalidate the law enforcement agencies that are currently enrolled in the program to ensure each enrollment is verified as being legitimate and an eligible law enforcement agency, and how long will this process take? And what impact will it have on approving new applications?

Mr. SCOTT. So, for the Federal side of the program as we discussed earlier, all of those are suspended until they come forward and comply with our new procedures with the MOU, the POC, our

visit to see them, and our confirming their identities in the FBI database.

We think those requirements are both sound, to ensure integrity to the program, and they are also reasonable for a Federal agency to comply with.

On the State side of the program, we also intend to be proactive and go back and retroactively look at every single one of those organizations against that FBI database, as well, just to ensure that we don't have anything else there.

Mrs. HARTZLER. Great. And the GAO report mentions an annual training conference for State coordinators, and Representative Brown talked about the training and that the State coordinator take this training within the State.

If this training is provided, why are law enforcement agencies reporting the need for more training on LESO program policies, and why did you feel the need to develop an online training tool? Why does this training vary within the States?

Mr. CANNON. So, we do an annual conference, it is actually next month in Norfolk, Virginia, where we train and advise the State coordinators on the policy, and then the State coordinators are responsible to train the trainer—to train their LEAs.

Some States do that better than others. To augment that, we have developed some online training to assist the LEAs. We offer over-the-phone or Skype-based training if an LEA needs training on how to—how to get into the program, how to work the program, how to account for property. We also have what we call job aids, which are basically checklists to help them do the step-by-step procedures.

As we do our program compliance review, we go to—every other year to every State to review their program, and to inventory a large number of their property. We provide training as required, as requested, while we happen to be there visiting that LEA.

Mrs. HARTZLER. Will the online training qualify to replace the additional—the training that the State may have? Is it either/or, or is it just supplement?

Mr. CANNON. It is to supplement, ma'am.

Mrs. HARTZLER. Okay.

Mr. SCOTT. I think, Congresswoman, we are also going to take when we conduct the fraud risk assessment, this is—we noted the number of LEAs that asked for more training. We are going to make that part of what we look at, under that review, as well, and go to the furthest extent of DOD's capability to provide additional training.

Mrs. HARTZLER. Very good. Thank you very much, sounds like you are taking very proactive steps, and we appreciate you doing that. I yield back.

Mr. WILSON. Thank you very much, Congresswoman Hartzler.

We now proceed to Congresswoman Carol Shea-Porter, of New Hampshire.

Ms. SHEA-PORTER. Thank you very much.

I am deeply concerned, like everybody is here, about this, but I am also very puzzled, because it seems to me—excuse me—there is more red tape to open up a donut shop than there is to get this equipment or that there was.

And I am puzzled as to how the rules and regulations could have been so loose that they were able to create this fictitious agency to receive this material. So, can you please walk me back to the beginning? Who drafted these regulations that allowed?

Because as I listen to you now and you say and I am—you know, I am glad that you are doing that, that now you have identified a point of contact and you have all these steps there. But common sense says they should have been there at the beginning.

And so, I would like you to walk me back to the very beginning. Who drafted this? Obviously, with so many holes in it, that it was possible for the GAO to do this and who knows who else. And I also would like to see that the people who drafted this clearly are not competent enough to handle this work.

And so, I am not comfortable with the answer of, well, you know, we are going to go back and we have several possibilities. This is a question of competence; this was a serious job, and they failed the people of this country. And so, I would appreciate your comments on that.

Mr. CANNON. The 1033 Program management was transferred to Defense Logistics Agency's Disposition Services in very late 2008, through—and we completed the transfer in 2009. And we are following procedures from there, I—the procedures that we had in place requiring the LEAs to complete a thorough application, to have a regional special agent in charge required to sign the application, and have the statute of authority, was identified as being insufficient by the GAO, and we have since made improvements.

As a note, the application wasn't immediately approved; there was some back and forth between GAO and my staff, and it took several months before the application was approved, but it was, in fact, approved, and should not have been. We have tightened up those procedures since then.

Mr. SCOTT. And I will add, Congresswoman, again, we view it just as seriously. The other things that have been reviewed here, and again, our view of those controls was that, with Mr. Cannon's group working directly with those Federal organizations and the things he went through, that we did have the controls in place.

That clearly is not the case. But the program has also been reviewed by other external folks, as well. There have been previous GAO reports. We have had an independent review of the program by the RAND Corporation.

It doesn't make it any better, but the external reviews also did not identify these deficiencies. Now that we know them, we are all over it to make sure it never happens again.

Ms. SHEA-PORTER. I appreciate your honesty in your comment, but it still doesn't cover the basic problem here. Now, I read something about now they are going to have to show an ID. So can you tell me what was meant by that, that they didn't have to show an ID?

Mr. CANNON. Ma'am, when someone comes to a Disposition Services site to pick up property, to—they are not an employee of Disposition Services, everyone is required to present an ID and follow proper sign-in procedures.

We have always had those measures in place. In this case, those measures were not adequately followed. So, what I have done since

then, is I immediately, at the three locations because I don't know the specifics because the GAO report didn't identify them, but we were able to figure out the locations they went to.

We immediately conducted remedial training on everybody there to ensure they were following the protocols that are already in place. And then since—and then we started, I actually brought my six field leaders to Battle Creek, Michigan, to my headquarters, to talk to them about this face-to-face in the first—second week of July and gave them 30 days to train every single individual, every single employee in Disposition Services, on following the proper procedures for identification of personnel and kind count and condition of property.

We have about 50 percent of our sites complete, and we will be complete next month, retraining everybody and emphasizing the need to follow the established procedures.

Ms. SHEA-PORTER. And I appreciate that, but again these are not toys, and these were rules and regulations that were violated and could have wound up in a very serious outcome here. And so, I think just speaking to them is not enough; they had a responsibility to follow this protocol which was weak enough as it was.

And so, I still want to know what happens besides you guys shouldn't have done that?

Mr. SCOTT. So the moment Mr. Cannon is able to identify who those individuals are, our agency and his organization have a precedent and are prepared to take the appropriate administrative disciplinary action. And that can be anything from suspensions without pay to removal from the position.

Ms. SHEA-PORTER. Okay, thank you. And I yield back.

Mr. WILSON. Thank you, Congresswoman Shea-Porter, we appreciate your service.

And we now proceed to Congressman Don McEachin, of Richmond.

Mr. MCEACHIN. Thank you, Mr. Chairman.

Many of my questions have been touched on so I am going to ask one that might be a little bit more nuanced. And that is this, when you-all dispose of controlled property, such as the ones—such as the items that we have been talking about, do you—and let's assume that you are going to—local law enforcements requested it.

Do you take into consideration what is going on in that area at the time? For instance, if there are tensions between the local citizens and the police department, or anything like that, or do you just, sort of, dispose of the property in accordance with whatever guidelines you have in place?

Mr. CANNON. If we have a request from a law enforcement agency, that request for property has to be first approved by their local governing body—so the State, city council—then that has to go to a State coordinator who has to approve the request.

And then when that request comes to us, we will issue property, if the property is available. If property is not issued to the Department of Defense, who has first priority, and to our special programs who have second priority, and it is controlled property, then that equipment is demilitarized and destroyed.

Mr. MCEACHIN. Let me follow up on that and ask the question maybe a slightly different way. Assuming that it has been ap-

proved by the governing body then submitted to you by the State liaison, are there any circumstances in which you say nope, you know, City of Richmond you are just not going to get this property for whatever reasons?

Mr. CANNON. We give priority of property to counterdrug, border protection, and counterterrorism. So, if there are multiple requests, that will determine which LEA gets it; but we also, if the FBI tells us that they have concerns with an LEA, and advises us, then we do not issue to that LEA.

Mr. SCOTT. The other thing, Congressman, is we also have allocation limits, too, so that in terms of the quantity of those types of items that they can have that we look at the size of that organization. That is another thing that can limit how much of these controlled items a unit can get.

Mr. MCEACHIN. Right, thank you.

And Mr. Chairman, I yield back.

Mr. WILSON. Thank you very much, Congressman McEachin.

We now have a final question from Congresswoman Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman.

Ms. Merritt, we have heard the DLA describe the actions that they have taken, and that they believe they have taken appropriate actions to fix the problem.

Now, my question to you is, how would you assess DLA's actions, both in response to your recommendations and other steps that they have taken?

Ms. MERRITT. We have assessed those actions as positive steps in the right direction. However, we can't emphasize enough that we believe that top leadership and senior level leadership at DLA is imperative in order for those recommendations to be implemented.

At GAO, we continuously follow up on the implementation of those recommendations, and we will do so, at this point in time, and oftentimes, in our reporting on programs we do include those status reports. Those statuses is also published on our public website, as well, so you, as well as the public at large, have the opportunity to look at the progress that is being made by DLA on those recommendations.

Ms. BORDALLO. So I take it that you are satisfied with what they are doing now, but you are going to be closely monitoring it in the future, is that correct?

Ms. MERRITT. Yes, the steps that we have asked them, as it relates to the four recommendations that we have, are all steps that we have proposed and they agreed to. They also established timelines in their comments to us on the report, so that is also very important as to whether or not they meet those milestones, and hopefully those will be immediate milestones.

And so, with respect there, we do continue to follow, as I said, and if there are problems, we duly note that.

Ms. BORDALLO. Good. Thank you, Ms. Merritt.

And I yield back. Thank you.

Mr. WILSON. Thank you very much, Congressman Bordallo, and as we conclude, the 1033 Program is so important to help provide security for American families.

Mr. Scott, could you tell the American people, that is—how many State, local, Federal agencies that you work with, what is the value of the surplus equipment that you provide?

Mr. SCOTT. So again, we have 8,621 agencies in the program. We have the property, on the books of those folks through the program, is over 1.5 million pieces of equipment valued over \$2.4 billion in original acquisition value. That is the—the good that we are providing to those law enforcement agencies.

Mr. WILSON. Well again, thank you for restating that. It is so important that the American people know this, and again, the GAO, we appreciate the Government Accountability Office, your success in working with the DLA.

We are at this time, we shall adjourn, and we thank all of you for being here today.

[Whereupon, at 11:31 a.m., the subcommittee was adjourned.]

A P P E N D I X

JULY 27, 2017

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

JULY 27, 2017

Statement of the Honorable Joe Wilson
Chairman, Readiness Subcommittee
“Continued Oversight of the Transfer of Excess Military Equipment to
Civilian Law Enforcement Agencies”
July 27, 2017

Good morning. This hearing will come to order.

Ladies and gentlemen, I welcome you all here today, and call this hearing of the House Armed Services Committee, Readiness Subcommittee, on “Continued Oversight of the Transfer of Excess Military Equipment to Civilian Law Enforcement Agencies” to order.

One of the objectives of this subcommittee is to bring attention to matters that impact the overall readiness of the Department of Defense. This includes programs or activities which face management challenges, present budget implications, or could be administered more efficiently. Whatever the root causes, it is our goal to provide necessary oversight in order to ensure our armed forces achieve the highest levels of readiness possible. Given the current threats facing our nation and the budgetary pressure placed on the Department of Defense, accountability is paramount and every dollar counts. Vigorous oversight can help ensure that mistakes don’t happen and when they inevitably do, we learn lessons from these missteps.

For this reason, I am pleased to convene this hearing today on the recent Government Accountability Office report highlighting deficiencies found with the management and operation of the Law Enforcement Support Office (LESO) within the Defense Logistics Agency. The LESO is responsible for the “1033 Program” which has provided tremendously valuable resources to our federal, state, and local law enforcement agencies since 1991. These necessary items have contributed to law enforcement’s ability to conduct counter-narcotics, counter-terrorism, and border security missions throughout the United States and ensure that items already paid for by the taxpayer continue to “protect and serve” the citizens of the United States.

Earlier this month, the GAO report stated that the DLA managed LESO program inappropriately assigned more than 100 controlled items with an estimated value of \$1.2 million. This revealed deficiencies in the process for verification and approval of federal law enforcement agency applications and in the transfer of controlled property. The Department of Defense, DLA, and the LESO program must improve its monitoring, management, and administration of this critical program. I read the GAO recommendations very carefully and applaud DLA for taking a very pro-active approach to

addressing the shortfalls and immediately acknowledging the problems identified.

I look forward to hearing what progress DLA has made in continuing to remedy these various deficiencies. Our oversight intends to ensure taxpayer dollars are used responsibly, security is maintained for sensitive items, and accountability of equipment is never taken for granted.

Our panel will address the findings and recommendations of the GAO report as well as the actions taken by DLA to correct identified deficiencies.

I now turn to my colleague, Ranking Member Madeleine Bordallo, for introductory remarks.



United States Government Accountability Office

Testimony

Before the Subcommittee on Readiness,
Committee on Armed Services, House
of Representatives

For Release on Delivery
Expected at 10 a.m. ET
Thursday, July 27, 2017

DOD EXCESS PROPERTY

Enhanced Controls Needed for Access to Excess Controlled Property

Statement of Zina D. Merritt, Director, Defense
Capabilities and Management

Wayne A. McElrath, Director, Forensic Audits and
Investigative Service

Chairman Wilson, Ranking Member Bordallo, and Members of the Subcommittee:

Thank you for the opportunity to be here today with my colleague, Wayne McElrath, with whom I am jointly providing this statement. Today, we will discuss our July 2017 report on the Department of Defense (DOD) Law Enforcement Support Office (LESO) program, also known as the 1033 program in reference to the section of the law authorizing it.¹ Under this authority, DOD can transfer excess personal property to federal, state, and local law enforcement agencies.² The Defense Logistics Agency (DLA) Disposition Services administers the LESO Program for DOD.

Since 1991, DOD has reported transferring more than \$6 billion worth of its excess personal property to more than 8,600 federal, state, and local law enforcement agencies. According to DOD, about 4 to 7 percent of the total excess property transferred is controlled property, which typically involves sensitive equipment and items that cannot be released to the public. Examples of controlled items available include night-vision goggles, thermal imaging equipment, specialized printers, and explosive ordnance detonation robots, as well as certain high-visibility items, such as small arms, High Mobility Multipurpose Wheeled Vehicles (HMMWVs), Mine-Resistant Ambush Protected Vehicles (MRAPs), and aircraft. LESO program data shows that during calendar years 2013 through 2015, approximately \$1.1 billion of excess controlled property was transferred to federal, state, and local law enforcement agencies. Approximately two-thirds of the 388,000 DOD excess controlled property items had been transferred to state and local agencies, and one-third had been transferred to federal agencies.

Over the past 15 years, we have examined DOD's excess property reutilization program and reported deficiencies, including unauthorized parties obtaining excess controlled property and internal control breakdowns with regard to the security of sensitive excess military equipment.³ We have made over 20 recommendations aimed at

¹GAO, *DOD Excess Controlled Property: Enhanced Controls Needed for Access to Excess Controlled Property*, GAO-17-532 (Washington, D.C.: July 18, 2017).

²DOD defines personal property as all DOD property except real property, records of the federal government, and certain naval vessels.

³Internal control is a process used by management to help an entity achieve its objectives. See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

enhancing internal controls over DOD's disposal and accountability of its excess property and improving the overall economy and efficiency of the reutilization program. The department has implemented most of the recommendations. Likewise, the DOD Office of Inspector General has reported on internal control deficiencies, such as the distribution of excess property to law enforcement agencies without the accountability necessary to ensure that the released property had the proper authorization. The Inspector General has made recommendations, which the department has also implemented.

Our testimony today summarizes key findings from our July 2017 report on DOD excess property. Accordingly, our testimony addresses (1) how federal, state, and local law enforcement agencies reported using and benefiting from excess controlled property transferred to them through the LESO program; and (2) the extent to which DLA has taken actions to enhance processes, including internal controls, related to its transfers of excess controlled property.

To conduct our work, we reviewed DOD policies and procedures, interviewed and surveyed cognizant officials, and conducted independent testing of LESO's application and DLA's transfer process. Specifically, we conducted a survey of 15 participating federal law enforcement agencies as well as 53 state coordinators who had controlled property transferred to their offices through the LESO program during calendar years 2013, 2014, and 2015 to gain an understanding of their use of the LESO program.⁴ Also, we conducted non-generalizable case studies of five states: Arizona, Georgia, Maryland, Michigan, and Texas. We interviewed federal, state, and local law enforcement officials in each of the selected states to gain an understanding of how property is transferred to them, including how they screen for, obtain, and dispose of DOD excess controlled property.

Additionally, our investigators created a fictitious federal agency to conduct independent testing of the LESO program's internal controls and DLA's transfer of controlled property to law enforcement agencies. We

⁴State coordinators are Governor-appointed positions to manage LESO program responsibilities in their respective state or U.S. territory. As of September 2016, all states, with the exception of Hawaii, had a state coordinator, and the following territories had state coordinators: Guam, Northern Marianas Islands, Puerto Rico, and U.S. Virgin Islands. For purposes of this statement, when we reference state coordinators, we are referring to state coordinators from states and U.S. territories.

also compared DLA and LESO practices to those identified in GAO's *A Framework for Managing Fraud Risks in Federal Programs* (hereafter cited as the Fraud Risk Framework).⁵ Issued in July 2015, GAO's Fraud Risk Framework is a comprehensive set of leading practices that serves as a guide for program managers to use when developing efforts to combat fraud in a strategic, risk-based manner. Further details on our scope and methodology are included in our report. The work on which this statement is based was conducted in accordance with generally accepted government auditing standards and our investigative work was performed in accordance with the Council of Inspector General on Integrity and Efficiency standards for investigations.

Law Enforcement Agencies Reported Various Uses and Benefits from the Transfer of the DOD Excess Controlled Property

Federal law enforcement agencies and state coordinators in our survey—as well as officials we interviewed from federal, state, and local law enforcement agencies—reported various uses of DOD excess controlled property for law enforcement activities. The reported uses included enhancing counterdrug, counterterrorism, and border-security activities. Also, law enforcement agencies reported using DOD's excess controlled property for other law enforcement activities, such as search and rescue, natural disaster response, surveillance, reaching barricaded suspects, police training, and the serving of warrants.

Federal, state, and local agencies cited a number of ways in which they had benefited from LESO program, with several reporting that the transfers of controlled property allowed them to save money. For example, a local law enforcement official in Texas reported that 96 percent of the department budget goes to salaries and that the LESO program helped the department acquire items that it would otherwise not be able to afford, saving the department an estimated \$2 million to \$3 million. Additionally, agencies provided examples of how property they received through the LESO program have been used. For example, the Bureau of Indian Affairs officials reported they have used vehicles to support their Office of Justice Services' drug unit during marijuana eradication and border operations by providing transport to agents over inhospitable terrain in mountainous and desert environments. In another example, Texas law enforcement officials reported that the San Marcos and Hays County police departments used their issued Mine Resistant

⁵ GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: July 28, 2015).

Ambush Protected (MRAP) vehicles to rescue more than 600 stranded people from floodwaters in October 2015. Moreover, the Los Angeles County Sheriff's Department reported that it used a robot to remove a rifle from an attempted murder suspect who had barricaded himself.

**DLA Has Taken Some
Actions to Address
Weaknesses in Its
Excess Controlled
Property Program,
but Deficiencies Exist
in Key Processes**

**DLA Actions to Address
Weaknesses in LESO
Program**

DLA has taken some steps to address previously identified weaknesses in its processes for transferring and monitoring its excess controlled property through revisions to its policy and procedures on the management, oversight, and accountability of the LESO program. Such revisions were made, in part, because of recommendations made by the DOD and DLA Offices of Inspector General. The DOD and DLA Offices of Inspector General conducted four audits of the LESO program between 2003 and 2013 that identified more than a dozen recommendations, such as developing and implementing written standard operating procedures for the approval and disapproval of law enforcement agency property requests and issuance, transfer, turn-in and disposal of LESO property. In our July 2017 report, we found the department had taken the following actions to enhance its transfer process through revisions to policy and procedures:

- transitioned full management responsibility of the LESO Program to DLA Disposition Services in 2009;
- developed LESO Program Standard Operating Procedures in 2012 and updated them in 2013;

-
- transitioned to a new data system in 2013 after identifying that the old system was not capable of post-issue tracking;⁶
 - revised the DLA instruction that provides policy, responsibility, and procedures for DLA's management responsibilities of the LESO program in 2014 and 2016;⁷ and
 - revised LESO program processes in 2016 to incorporate recommendations made by the Federal Interagency Law Enforcement Equipment Working Group,⁸ such as defining executive order controlled property or prohibiting schools K-12 from participating in the program.

In addition, DLA is in the process of developing additional training on LESO program policies and procedures, and is establishing memorandums of understanding with federal law enforcement agencies on the general terms and conditions of participating in the program, including the restrictions on the transfer and sale of controlled property.

DLA Has Deficiencies in Its Processes for Verifying and Approving Applications and Transferring Property and Has Not Conducted a Risk Assessment

We found weaknesses in three areas: (1) verifying and approving applications, (2) transferring property, and (3) the assessment of risk. First, our independent testing of the LESO program's internal controls identified deficiencies in the processes for verification and approval of federal law enforcement agency applications. Specifically, our investigators posing as authorized federal law enforcement officials of a fictitious agency applied and were granted access to the LESO program in early 2017. In late 2016, we emailed our completed application to the LESO program office. Our application contained fictitious information including agency name, number of employees, point of contact, and physical location. In early 2017, after revising our application at the direction of LESO officials we were notified that our fictitious law enforcement agency was approved to participate in the LESO program. LESO officials also emailed us to request confirmation of our agency's

⁶This new system, managed by the Forest Service, allows state and local law enforcement agencies to complete their annual inventories and certification and manage their own property book.

⁷DLA Instruction 8160.01, *Law Enforcement Support Office* (July 21, 2014), and DLA Instruction 4140.11, *Department of Defense 1033 Program* (Dec. 22, 2016).

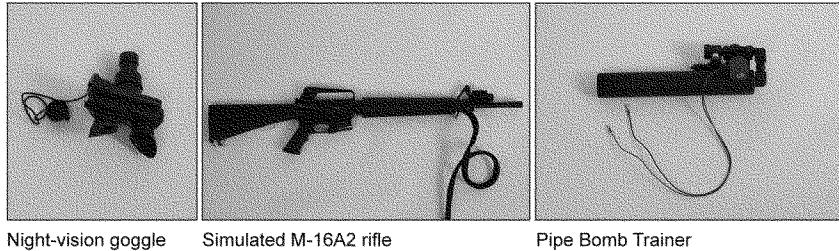
⁸In 2015, the President issued Executive Order 13688, *Federal Support for Local Law Enforcement Equipment Acquisition*, which established a Federal Interagency Law Enforcement Equipment Working Group to support oversight and policy development functions for controlled equipment programs.

authorizing statute; in response, our investigators submitted fictitious authorizing provisions as provisions in the U.S. Code. At no point during the application process did LESO officials verbally contact officials at the agency we created—either the main point of contact listed on the application or the designated point of contact at a headquarters’ level—to verify the legitimacy of our application or to discuss establishing a memorandum of understanding with our agency.

DLA’s internal controls for verifying and approving federal agency applications and enrollment in the LESO program were not adequate to prevent the approval of a fraudulent application to obtain excess controlled property. Specifically, LESO’s reliance on electronic communications without actual verification does not allow it to properly vet for potentially fraudulent activity. For example, DLA did not require supervisory approval for all federal agency applications, or require confirmation of the application with designated points of contact at the headquarters of participating federal agencies. Additionally, at the time we submitted our application, DLA officials did not visit the location of the applying federal law enforcement agency to help verify the legitimacy of the application. After our briefing of DLA officials in March 2017 on the results of our investigative work, DLA officials stated they took immediate action, and in April 2017 visited 13 participating federal law enforcement agencies. However, at this time DLA has not reviewed and revised the policy or procedures for verifying and approving federal agency applications and enrollment in the LESO program.

Second, our independent testing also identified deficiencies in the transfer of controlled property, such as DLA personnel not routinely requesting and verifying identification of individuals picking up controlled property or verifying the quantity of approved items prior to transfer. Our investigators, after being approved to participate in the LESO program, obtained access to the department’s online systems to view and request controlled property. We subsequently submitted requests to obtain controlled property, including non-lethal items and potentially-lethal items if modified with commercially available items. In less than a week after submitting the requests, our fictitious agency was approved for the transfer of over 100 controlled property items with a total estimated value of about \$1.2 million. The estimated value of each item ranged from \$277 to over \$600,000, including items such as night-vision goggles, reflex (also known as reflector) sights, infrared illuminators, simulated pipe bombs, and simulated rifles. Our investigator scheduled appointments and obtained the controlled property items, such as those shown in the photos below.

Figure 1: Examples of Excess Controlled Property Items Obtained



Night-vision goggle

Simulated M-16A2 rifle

Pipe Bomb Trainer

Source: GAO photos of DOD excess controlled property items obtained. | GAO-17-781T

Using fictitious identification and law enforcement credentials, along with the LESO-approved documentation, our investigator was able to pass security checks and enter the DLA Disposition Service warehouse sites. Personnel at two of the three sites did not request or check for valid identification of our investigator picking up the property. According to DLA guidance, direct pickup of allocated property may be made by an individual with valid identification and the appropriate DOD authorization form that is signed by the authorized individual listed in the letter.⁹

DLA has not taken steps to reasonably ensure that onsite officials routinely request and verify valid identification of the individual(s) authorized to pick up allocated property from the LESO program, as required by the guidance. DLA officials acknowledged they could take additional steps to ensure compliance with the requirements in the handbook. Furthermore, although we were approved to receive over 100 items and the transfer documentation reflects this amount, we were provided more items than we were approved to receive. The discrepancy involved one type of item—infrared illuminators. We requested 48 infrared

⁹DLA, *Disposition Services Customer Handbook* (2016). According to program documentation, when an application to participate in the LESO program is approved, an Authorization Letter for Property Screening is generated and forwarded to the state coordinator or federal agency. The letter of authorization includes participant information such as telephone number and address that can be used by a DLA Disposition Services' site to contact an agency, if needed, to coordinate the direct pickup of property.

illuminators but onsite officials at one Disposition Services site provided us with 51 infrared illuminators in 52 pouches, of which one pouch was empty. Additionally, we found that one DLA Disposition Services site had a checklist as a part of their transfer documentation for their personnel to complete. The checklist required manual completion of several items, including quantity, date, and who fulfilled the order. The other two DLA Disposition Services sites, including the site that transferred the wrong quantity, did not include this checklist with the transfer documentation we received. DLA guidance states that accountability records be maintained in auditable condition to allow property to be traced from receipt to final disposition.¹⁰ We concluded that without guidance that specifically requires DLA Disposition Services' on-site officials to verify the type and quantity of approved items against the actual items being transferred prior to removal from the sites, DLA will lack reasonable assurance that the approved items transferred are appropriately reflected in their inventory records.

Third, while DLA has taken some steps, mostly in early 2017, to address identified deficiencies in the LESO program, DLA lacks a comprehensive framework for instituting fraud prevention and mitigation measures. During the course of our review, DLA revised the LESO program applications by requiring applicants to sign an attestation that the agency that they represent is a legitimate law enforcement agency. Further, DLA officials stated they are more carefully reviewing the legitimacy of some information on the application such as email addresses and physically visiting federal agencies that enter into memorandums of understanding with the LESO program.

However, as previously discussed, we identified internal controls weakness in the policy and procedures for verifying and approving federal agency applications and enrollment as well as weakness throughout the process from approval to the actual transfer of the items to the agencies, which indicates that DLA has not examined potential risks for all stages of the process. According to GAO's Fraud Risk Framework¹¹, effective fraud risk managers collect and analyze data on identified fraud schemes, use these lessons learned to improve fraud risk management activities, and plan and conduct fraud risk assessments that are tailored to their

¹⁰DOD Manual 4160.01, vol.1, *Defense Materiel Disposition: Disposal Guidance and Procedures* (October 22, 2015).

¹¹ GAO-15-593SP (Washington, D.C.: July 28, 2015).

programs. The framework states there is no universally accepted approach for conducting fraud risk assessments since circumstances among programs vary. However, per leading practices, assessing fraud risks generally involves five actions: (1) identifying inherent fraud risks affecting the program, (2) assessing the likelihood and effect of those fraud risks, (3) determining fraud risk tolerance, (4) examining the suitability of existing fraud controls and prioritizing residual fraud risks, and (5) documenting the program's fraud risk profile.

DLA has begun to examine some fraud risks associated with the LESO program. However, DLA officials acknowledged during our March 2017 meeting that they have not conducted a fraud risk assessment on the LESO program to include the application process, and as such, has not designed or implemented a strategy with specific control activities to mitigate risks to the program. We concluded that conducting such an assessment could have program-wide improvements, including strengthening the controls to verify the legitimacy of applicants.

Overall, we concluded in our July 2017 report that DLA's internal controls did not provide reasonable assurance in preventing fraud. Therefore, we made four recommendations for DLA to:

- review and revise policy or procedures for verifying and approving federal agency applications and enrollment;
- ensure compliance that DLA Disposition Services on-site officials transferring controlled property verify that persons picking up items have valid identification and are authorized to pick up allocated property from the LESO program;
- issue guidance that requires DLA Disposition Services on-site officials to verify the type and quantity of approved items against the actual items being transferred prior to removal from the sites; and
- conduct a fraud risk assessment to design and implement a strategy with specific internal control activities to mitigate assessed fraud risks.

DOD concurred with all of our recommendations and highlighted actions to address each one.

Chairman Wilson, Ranking Member Bordallo, and Members of the Subcommittee, this concludes our prepared statement. My colleague, Mr. McElrath, and I would be pleased to respond to any questions that you may have at this time.

Contacts and Acknowledgments

For questions about this statement, please contact Zina D. Merritt at (202) 512-5257 or merrittz@gao.gov or Wayne A. McElrath at (202) 512-2905 or mcelrathw@gao.gov. In addition, individuals making significant contributions to this statement include: Marilyn Wasleski, Assistant Director; Laura Czohara, Martin de Alteriis, Barbara Lewis, Felicia Lopez, Maria McMullen, George Ogilvie, Richard Powelson, and Samuel Woo.

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Zina Daché Merritt
Director, Defense Capabilities and Management Team
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Zina Daché Merritt is a Director in the U.S. Government Accountability Office's (GAO) Defense Capabilities and Management team, Washington, DC. She has worked in the national security and international affairs arena since 1989 when she joined GAO after working briefly for the Department of the Army in Fort Hood, Texas, where she began her federal career. Her national security and international affairs expertise spans a variety of issue areas. Recent bodies of work that she directed have focused on issues relating to defense logistics, infrastructure, human capital management, warfighter support, and counterterrorism. She has directed a number of high profile efforts including supporting GAO's High Risk List Update Series through reviews of the Department of Defense's Supply Chain Management and Approach to Business Transformation high risk areas. Ms. Merritt also served as the Director for GAO's 2012 statutory reporting requirement that mandates GAO to identify and report to Congress on federal programs, agencies, offices, and initiatives, either within departments or governmentwide, which have duplicative goals or activities. She was the co-lead of GAO's American Recovery and Reinvestment Act oversight team for the state of Florida.

Ms. Merritt completed the Harvard John F. Kennedy School of Government Senior Executives National and International Security program. She received a B.S. degree in Business Administration and a M.S. degree in Computer Information Systems.

Wayne A. McElrath
Director of Investigations, Forensics Audits and Investigative Services
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Mr. Wayne A. McElrath serves as GAO's Director of Investigations. Specifically, he manages a small but select group of criminal investigators and investigative research analysts who perform special investigations, controls testing, and vulnerability assessments, as well as process and investigate allegations of fraud, waste, and abuse pursuant to GAO's broad investigative authority granted under Title 31 of the United States Code. Mr. McElrath has over 20 years of federal law-enforcement experience. This experience includes investigative positions with the Defense Criminal Investigative Service; United States Customs Service (forerunner of Homeland Security Investigations); United States Postal Service, Office of Inspector General (OIG); and Environmental Protection Agency, OIG.

Mr. McElrath is also a graduate of the University of Missouri–St. Louis; the Harvard Senior Executive Fellows program; and the Federal Executive Institute. He is a former United States Marine and Army Reservist, and is a member of several prestigious professional law enforcement-centric organizations, such as the Association of Certified Fraud Examiners, Association of Inspectors General, National Association of Chiefs of Police, and National Internal Affairs Investigators Association.

**WRITTEN STATEMENT OF
MR. MIKE SCOTT
DEPUTY DIRECTOR, LOGISTICS OPERATIONS
DEFENSE LOGISTICS AGENCY
BEFORE THE
HOUSE ARMED SERVICES COMMITTEE**

JULY 27, 2017

**FOR OFFICIAL USE ONLY
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HOUSE ARMED SERVICES COMMITTEE**

Chairman Wilson, Ranking Member Bordallo, distinguished committee members, thank you for the opportunity to appear here today to discuss the Defense Logistics Agency's (DLA) administration and execution of Section 1033 of the National Defense Authorization Act for Fiscal Year 1997, also known as LESO. I am Mike Scott, Deputy Director, DLA Logistics Operations. 10 USC 2576a authorizes the Secretary of Defense to transfer excess Department of Defense equipment to federal and state law enforcement agencies, or LEAs. The 1033 Program provides law enforcement agencies around the country and U.S. Territories with an avenue to receive DOD excess items to support their law enforcement duties.

With me today is Mr. Mike Cannon, the Director of DLA Disposition Services. We appreciate the opportunity to discuss the 1033 program and the July 2017 GAO report on DOD Excess Property and to inform you of the actions we have taken to improve our processes.

The Defense Logistics Agency, is responsible for providing worldwide logistics support to the military departments and the combatant commands under conditions of both peace and war, as well as providing support to other DoD components and federal agencies and, when authorized by law, state and local government organizations, foreign governments, and international organizations.

DLA provides virtually every consumable item that America's military forces require for combat readiness, emergency preparedness, or day-to-day operations. This includes food, fuel, medical supplies, clothing and textile items, construction and barrier materiel, and more than 85 percent of the repair parts for their weapon systems. We directly support the materiel readiness and sustainment of military equipment and weapon systems and the personnel who operate and

maintain them worldwide.

The Defense Logistics Agency is also responsible for the disposal of excess personal property received from the military services. This is the primary mission for DLA Disposition Services. They are part of DLA's worldwide presence, serving in 16 foreign countries, 2 U.S. territories, and 41 states. With a workforce of approximately 1,500 people, Disposition Services is responsible for the reutilization, transfer, donation, sale, demilitarization, and control of both excess and surplus Department of Defense equipment. Additionally, DLA Disposition Services administers and executes the 1033 program through their Law Enforcement Support Office (LESO).

Government agencies whose primary function is enforcement of applicable Federal, State, local laws, and whose compensated law enforcement officers have powers of arrest and apprehension, are eligible to participate in the 1033 program. Under the 1033 program, each State/U.S. territory is required to sign a Memorandum of Agreement with the Defense Logistics Agency that identifies regulatory guidance and assigned roles/responsibilities. Currently, more than 7,400 federal and state law enforcement agencies across 50 states and 3 U.S. territories are active participants in the program. DLA currently has 30 Federal Departments and Agencies enrolled. These are the higher headquarters to the 345 Federal Law Enforcement Activities (Federal Field Activities) enrolled in the program.

DLA has worked extensively over the last several years to improve the state/local side of the program. A key to its success is the governor-appointed state coordinator who acts as the liaison with the LESO and must sign a Memorandum of Agreement with DLA and have a plan of action detailing how they will remain compliant with the program. State coordinators approve and certify the participating law enforcement agencies in their states and each property request

prior to those requests coming to LESO for approval. They also work closely with the LEAs to provide training, assist with tracking property and program compliance reviews, and help coordinate corrective action plans if LEAs are non-compliant and suspended from the program.

While the GAO's recent review validated enhancements made in the state/local LEA side of the program, it highlighted vulnerabilities in the federal LEA side of the program, which accounts for about four percent of the total LEA enrollment.

Previously, LESO worked directly with federal LEAs on program participation and validation. Now, LESO is working more closely with a higher headquarters coordinator who will act in a role similar to a state coordinator and will validate and approve applications and property requests.

I will now focus on the findings and recommendations from the GAO report. We recognize the issues identified in the report and concur with their recommendations. The GAO identified deficiencies in the processes for verification and approval of Federal law enforcement agency applications and in the transfer of controlled property.

DLA takes the findings very seriously, and is actively addressing and correcting deficiencies to resolve breakdowns in the application and validation processes to ensure appropriate property allocations to legitimate federal LEAs. Substantive program improvements have been implemented to provide assurance of program compliance. These improvements include:

Revising the procedures for verifying and approving federal agency applications for enrollment. All federal law enforcement agencies now require approval of any requests from the headquarters of the agency. Once approved by the federal law enforcement agency's headquarters point of contact, DLA LESO supervisory personnel will review the application for

approval of enrollment. DLA now requires participating federal agency headquarters' to assign a point of contact (POC) and to sign a memorandum of understanding (MOU) acknowledging participation and accountability requirements for excess DoD property. These federal agency POC's or their designees will approve all applications for enrollment and all requests for equipment. The MOU was established in January, 2017 and was sent to federal agencies between February and April, 2017. Currently 12 of the 30 enrolled federal departments and agencies have signed an MOU. DLA is conducting site visits with the federal agency headquarters POC's for the federal agencies enrolled in the 1033 Program. As of the date of this report, DLA has visited and validated 22 federal agencies headquarters. Additionally, DLA is updating policy to reflect the revised procedural changes regarding federal law enforcement agency applications.

Additionally, current DLA policy requires on-site officials to request and verify identification from all customers, LESO customers included, that are authorized to pick-up property. DLA will conduct additional training regarding requesting and validating identification of customers picking up allocated property from all DLA Disposition Services Field Sites by October 1, 2017. Additionally, DLA will ensure compliance during our ongoing and regular inspection of field sites through Operational Effectiveness Reviews.

Further, DLA is reinforcing our policy requiring on-site officials to verify the type and quantity of approved items being transferred, prior to removal from sites. DLA will conduct additional training on the process to all DLA Disposition Services Field Sites by October 1, 2017.

Finally, DLA will conduct a fraud risk assessment and implement a strategy with specific internal control activities to mitigate assessed risks for all stages relating to DLA's transfer of controlled excess property to law enforcement agencies, consistent with

leading practices provided in GAO's Fraud Risk Framework. The estimated completion date for this recommendation is April 1, 2018.

DLA has made significant enhancements to improve its policies, procedures and internal controls to correct deficiencies in the 1033 program. We recognize the importance of providing support to the LEAs and their important mission and our oversight role.

Chairman Wilson, Ranking Member Bordallo, and members of the committee, I am grateful for the opportunity to discuss this important issue here today.

Michael D. Scott
Deputy Director, DLA Logistics Operations (J3)

Michael D. Scott, a member of the Senior Executive Service, is the deputy director, DLA Logistics Operations. DLA Logistics Operations is responsible for the end-to-end supply chain management of DLA's nine supply chains, providing logistics and materiel process management policy, guidance, oversight and monitoring of supply chain performance. DLA Logistics Operations oversees the daily operation of DLA's field activities supporting 2,400 weapon systems and engages customers around the world to maximize readiness and logistics combat power by leveraging an enterprise solution. He became the deputy director in May 2014.

Prior to his current position, Scott was the deputy commander of DLA Energy from January 2013 to April 2014. DLA Energy is a DLA field activity responsible for providing the Department of Defense and other government agencies with comprehensive energy solutions in the most effective and efficient manner possible. He was the executive director of DLA Energy from February 2011 to January 2013.

Scott has worked at DLA since 1986, both at DLA Headquarters and the former Defense Supply Center Columbus, Ohio, now DLA Land and Maritime. His previous positions include executive director for the Material Policy Process and Assessment Directorate, deputy director and director for strategic planning and enterprise transformation, Business Systems Modernization organizational alignment chief, DLA demand and supply planning process owner, DLA demand and supply planning process lead, Headquarters DLA Requirements Team chief, DSCC deputy director of enterprise business systems, DSCC acquisition and materiel management chief, DSCC Program Support Unit chief, DSCC Logistics Programs Division branch chief, DSCC Systems Development Team Chief, DSCC distribution systems analyst, DSCC requirements systems analyst and DSCC item management specialist.

Scott holds a bachelor of science degree in marketing from The Ohio State University. He is a graduate of the U.S. Air Force's Air War College and completed the Harvard University Kennedy School of Government Executive Leadership Series.

Over his career, Scott has received many awards, including the DLA Director's Award for Organizational Excellence, the DLA Scissors Award, the Federal Executive Association Reinvention Recognition Award, the Joint Meritorious Unit Award, the DoD Honorary Value Engineering Achievement Award, the DLA Productivity Achievement Award, Finalist/Nominee for the President's Council on Management Improvement Award, the Defense Superior Management Award, the Interagency Committee on Information Resource Management Award, 17 Special Acts of Service Awards and 10 Sustained Superior Performance Awards.

Michael O. Cannon, SES
Director, DLA Disposition Services

Michael O. Cannon currently serves as Director, DLA Disposition Services. Since 2014, he has led nearly 1,500 military and civilian personnel stationed at 73 sites in 15 countries, 41 states and three U.S. territories. His organization supports the Department of Defense by disposing of material no longer needed for national security, protects the public from dangerous defense items through responsible property reuse, hazardous property disposal, demilitarization, precious metals recovery and recycling initiatives, and complies with all legislative and regulatory requirements.

Cannon joined the Senior Executive Service in November 2014. He previously served on active duty with the United States Air Force for more than 33 years, retiring with the rank of colonel. He entered the Air Force in 1981 as an enlisted aircrew life support specialist, later earning a bachelor's degree from Eastern Illinois University in 1988 and accepting a commission in 1989.

He commanded the 43d Supply Squadron and 43d Logistics Readiness Squadron, Pope Air Force Base, North Carolina, and the 62d Aerial Port Squadron, McChord Air Force Base, Washington. He also commanded three deployed squadrons, one group, and a DLA Support Team in the U.S. Central Command area of responsibility, as well as the 727th Air Mobility Squadron at RAF Mildenhall, U.K. He held several staff positions at Air Mobility Command, to include Chief of Supply Analysis; Executive Officer, Logistics Directorate; and Deputy Chief, Materiel Readiness Division.

Prior to his final military assignment with DLA, Cannon was the deputy commander for the 521st Air Mobility Operations Group, Naval Station Rota, Spain. Before taking charge of DLA Disposition Services, he was business manager for Energy Convergence with DLA J6 and Deputy Director of Materiel Policy, Process and Assessment with DLA J3.

Cannon holds master's degrees in both logistics management and military operational arts and sciences, as well as a bachelor's degree, two associate's degrees and a certificate in supply chain management. Select military awards include the Defense Superior Service Medal, the Defense Meritorious Service Medal, and the Meritorious Service Medal with seven oak leaf clusters.